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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,075

05/13/2005

Ludwig Hasemann

2002CH011

1918

25255

7590

10/03/2007

CLARIANT CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
4000 MONROE ROAD  
CHARLOTTE, NC 28205

EXAMINER

KLEMANSKI, HELENE G

ART UNIT

PAPER NUMBER

1755

MAIL DATE

DELIVERY MODE

10/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/535,075

**Applicant(s)**

HASEMANN, LUDWIG

**Examiner**

Helene Klemanski

**Art Unit**

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1 and 5 have been amended, claims 4 and 11 have been deleted and no new claims have been added. Hence, claims 1-3 and 5-10 are pending in the application.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: in claim 1, the twelfth line after the formula (I), the term "or" should be deleted and also in claim 1, the fifteenth and sixteenth lines after the formula (I), the phrase "with the proviso that at least one of the substituents R<sub>5</sub>, R<sub>6</sub>, R<sub>7</sub>, R<sub>8</sub> or R<sub>9</sub> is different from H" should be deleted since this phrase appears twice in claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claim 1, the phrase "which means" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The use of this phrase suggests that the claimed composition may be produced to the desired end product with or without the inclusion of those components (i.e. limitations). Therefore, one must resort to

Art Unit: 1755

conjecture to ascertain applicants intended point. See Ex parte Steigerwald, 131 USPQ 74 (Bd. App. 1961). The examiner suggests the deletion of the phrase "which means" and the limitations following it.

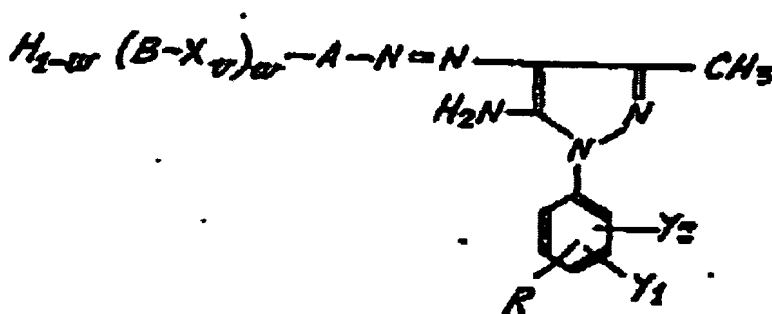
### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1413315.

GB 1413315 teaches a water-soluble azo reactive dye of the formula



wherein Y<sub>1</sub> and Y<sub>2</sub> each independently represent H, an alkyl group, an alkoxy group or a sulfo group with the proviso that only one of Y<sub>1</sub> and Y<sub>2</sub> is H; A is an aromatic heterocyclic ring such as a benzothiazole ring that may be substituted with a sulfo group, a sulfamoyl group, N-lower alkyl-sulfamoyl group, N,N-di-lower alkyl sulfamoyl group, a carboxy group, an amino group, a lower alkyl amino group, a hydroxy group or

Art Unit: 1755

a lower alkoxy group; R is a group of the formula  $-\text{SO}_2-\text{CH}_2-\text{CH}_2-\text{Z}$  (i.e. corresponding to applicants substituent  $\text{SO}_2\text{R}$ , wherein R is a substituted alkyl group such as  $-\text{CH}_2\text{CH}_2-\text{OH}$ ); Z represents a hydroxy group and v and w are both zero. The water-soluble azo reactive dyes are suitable for dyeing and printing various materials such as cellulose-containing fibrous materials. See page 1, lines 7-24, page 2, lines 35-60, page 3, lines 1-5, example 12 and claims 1-7, 17-20 and 29-31. GB 1413315 fails to specifically exemplify a monoazo dye wherein A is a substituted benzothiazole as claimed by applicants.

Therefore, it would have been obvious to one having ordinary skill in the art to use the specific monoazo dye wherein A is a substituted benzothiazole as claimed by applicants as GB 1413315 also discloses the use of these monoazo dyes but fails to show an example incorporating them.

### ***Allowable Subject Matter***

7. Claim 5 is allowed.

8. The following is an examiner's statement of reasons for allowance: EP 1413315 fails to teach or fairly suggest a monoazo dye wherein there is a 6-membered ring annealed to the phenyl ring of the pyrazole group as claimed by applicants.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

9. Applicant's arguments filed July 23, 2007 have been fully considered but they are not persuasive.

Applicants argue that each and every occurrence (i.e. in the examples) of the substituent R in the GB reference is a fiber reactive group. The examiner agrees, however, the GB reference does suggest that the R substituent can be a group of the formula  $-\text{CH}_2\text{CH}_2-\text{Z}$  wherein Z is a hydroxyl group. See pages 1 and 2 of the GB reference. It is the examiner's position that the group  $-\text{CH}_2\text{CH}_2-\text{OH}$  is a substituted alkyl group, which is one of the choices for applicants  $\text{R}_5$  to  $\text{R}_9$  (see pages 4, 5, 19, 23 and 24 of applicant's specification). A reference can be used for all it realistically teaches and is not limited to the disclosures in its specific examples". See In re Van Marter et al 144 USPQ 421; In re Windmer et al 147 USPQ 518, 523; and In re Chapman et al 148 USPQ 711. Accordingly, this action is final.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 1755

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helene Klemanski whose telephone number is (571) 272-1370. The examiner can normally be reached on Monday-Friday 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1755

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Helene Klemanski  
Primary Examiner  
Art Unit 1755



HK  
September 19, 2007